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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 MARGARITA M. BATTLES,

11 Plaintiff,

12 v.

13 NANCY A. BERRYHILL, Acting  
Commissioner of the Social Security  
Administration,

14 Defendant.

CASE NO. 3:16-cv-05662 JRC

ORDER ON PLAINTIFF'S  
CONTESTED MOTION FOR  
ATTORNEY'S FEES  
PURSUANT TO THE EQUAL  
ACCESS TO JUSTICE ACT

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16 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and  
17 Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S.  
18 Magistrate Judge and Consent Form, Dkt. 5; Consent to Proceed Before a United States  
19 Magistrate Judge, Dkt. 6). This matter comes before the Court on plaintiff's contested  
20 motion for attorney's fees and expenses pursuant to 28 U.S.C. § 2412 (hereinafter  
21 "EAJA") (*see* Dkt. 19, 20, 21).

22 Subsequent to plaintiff's success at obtaining a reversal of the decision of the  
23 Social Security Administration, defendant Commissioner challenged plaintiff's request  
24

1 for statutory attorney's fees on the grounds that the requested fees are unreasonable "in  
2 light of the results obtained." Response, Dkt. 20, p. 1.

3 After considering and reviewing the record, including plaintiff's motion for  
4 attorney's fees and expenses, and the attached time and expense sheet (*see* Dkt. 19), as  
5 well as the excellent results obtained by plaintiff's counsel, the Court finds that plaintiff's  
6 fee request is reasonable (*see id.*; *see also* Reply, Dkt. 21). Just because the Court  
7 exercises judicial economy and declines to discuss every argument raised by plaintiff as  
8 to why the matter should be reversed does not mean that plaintiff obtained limited  
9 success.  
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11 Therefore, plaintiff's motion for fees and expenses is granted pursuant to the  
12 Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA") in the amount of \$7,773.98 in  
13 attorney's fees, which includes the additional 1.9 hours incurred defending the motion,  
14 and \$2.87 for expenses.

#### 15 BACKGROUND and PROCEDURAL HISTORY

16 On June 21, 2017, this Court issued an Order reversing and remanding this matter  
17 for further consideration by the Administration (*see* Dkt. 16). The Court found that the  
18 ALJ erred when evaluating the medical evidence (*see id.*). This matter was reversed  
19 pursuant to sentence four of 42 U.S.C. § 405(g) for further consideration due to the  
20 harmful error in the evaluation of the medical evidence (*see id.*).  
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22 Subsequently, plaintiff filed a motion for EAJA attorney's fees, to which  
23 defendant objected (*see* Dkts. 19, 20). Defendant asserts that the amount of hours  
24 expended are unreasonable (Dkt. 20, p. 1). Plaintiff filed a reply (*see* Dkt. 21).

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According to the United States Supreme Court, “the fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). The government has the burden of proving that its positions overall were substantially justified. *Hardisty v. Astrue*, 592 F.3d 1072, 1076 n.2 (9th Cir. 2010), cert. denied, 179 L.Ed.2d 1215, 2011 U.S. LEXIS 3726 (U.S. 2011) (citing *Flores v. Shalala*, 49 F.3d 562, 569-70 (9th Cir. 1995)). Further, if the government disputes the reasonableness of the fee, then it also “has a burden of rebuttal that requires submission of evidence to the district court challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party in its submitted affidavits.” *Gates v. Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1992) (citations omitted). The Court has an independent duty to review the submitted itemized log of hours to determine the reasonableness of hours requested in each case. See *Hensley*, *supra*, 461 U.S. at 433, 436-37.

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16). In order to award a prevailing plaintiff attorney fees, the EAJA also requires a finding that the position of the United States was not substantially justified. 28 U.S.C. § 2412(d)(1)(B). Defendant implicitly conceded that the government's position was not substantially justified, as defendant argues that plaintiff's recovery for attorney's fees should be reduced, not eliminated (*see* Defendant's Response to Plaintiff's Motion for Attorney Fees, Dkt. 20).

The Court agrees with defendant's implicit concession (*see id.*). This conclusion is based on a review of the relevant record, including the government's administrative and litigation positions regarding the evaluation of the medical evidence. For these reasons, and based on a review of the relevant record, the Court concludes that the government's position in this matter as a whole was not substantially justified. *See Guitierrez v. Barnhart*, 274 F.3d 1255, 1258-59 (9th Cir. 2001) (citations omitted).

The undersigned also concludes that no special circumstances make an award of attorney fees unjust. See 28 U.S.C. § 2412(d)(1)(A). Therefore, all that remains is to determine the amount of a reasonable fee. *See* 28 U.S.C. § 2412(b); *Hensley, supra*, 461 U.S. at 433, 436-37; *see also Roberts v. Astrue*, 2011 U.S. Dist. LEXIS 80907 (W.D. Wash. 2011), adopted by 2011 U.S. Dist. LEXIS 80913 (W.D. Wash. 2011).

Once the court determines that a plaintiff is entitled to a reasonable fee, "the amount of the fee, of course, must be determined on the facts of each case." *Hensley, supra*, 461 U.S. at 429, 433 n.7. According to the U.S. Supreme Court, "the most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley, supra*, 461 U.S. at 433.

1           However, the “product of reasonable hours times a reasonable rate does not end the  
2 inquiry.” *Id.* at 434. The Court concluded that the “important factor of the ‘results obtained’”  
3 may lead the district court to adjust the fee upward or downward. *Id.* The Court stated that  
4 this factor particularly is “crucial where a plaintiff is deemed ‘prevailing’ even though he  
5 succeeded on only some of his claims for relief.” *Id.* (noting that other relevant factors  
6 identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (1974)  
7 “usually are subsumed within the initial calculation of hours reasonably expended at a  
8 reasonable hourly rate”) (other citation omitted).

9           The factor of “results obtained” may not be relevant, particularly when there is only a  
10 single claim in an appeal of a Social Security matter. *See Hensley, supra*, 461 U.S. at 435.

11           Here, plaintiff prevailed on the single claim of whether the denial of her social  
12 security application was based on substantial evidence in the record as a whole and not based  
13 on harmful legal error. When the case involves a “common core of facts or will be based on  
14 related legal theories . . . . the district court should focus on the significance of the overall  
15 relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.”  
16 *See Hensley, supra*, 461 U.S. at 435. The Supreme Court concluded that where a plaintiff  
17 “has obtained excellent results, his attorney should recover a fully compensatory fee.” *Id.*

18           Defendant has challenged whether plaintiff received excellent results. Defendant  
19 argues that plaintiff only obtained “limited success” because the Court did not address every  
20 argument that plaintiff raised as to why the matter should be reversed and remanded. Dkt. 20,  
21 p. 2. This argument is not persuasive. Simply because the Court chooses to exercise judicial  
22 economy and not address additional reasons to remand a case that it already has concluded  
23 must be remanded does not make it unreasonable for plaintiff to have presented those  
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1 arguments. Preservation of judicial resources is not a reason to reduce plaintiff's attorney's  
2 fees.

3 Plaintiff received a reversal of the ALJ's decision and a remand. Dkt. 16, p. 10. In  
4 addition, the Court concluded that most of the aspects of the case that plaintiff complained  
5 about would have to be addressed anew following remand of this matter, including plaintiff's  
6 credibility, the lay evidence and plaintiff's residual functional capacity ("RFC"). *Id.* at 9. The  
7 Court rejects defendant's argument that plaintiff did not receive excellent results.

8 According to the Supreme Court, where a plaintiff "has obtained excellent results,  
9 h[er] attorney should recover a fully compensatory fee." *See Hensley, supra*, 461 U.S. at 435.  
10 Therefore, plaintiff's attorney should be paid for developing all arguments reasonably  
11 supported by the record and the law that reasonably support her single claim that her  
12 administrative determination from the Social Security Administration should be reversed. In  
13 this matter, that's all of them.

14 Because the Court concludes based on a review of the relevant evidence that the  
15 plaintiff here obtained excellent results, the Court will look to "the hours reasonably  
16 expended on the litigation," which, when combined with the reasonable hourly rate,  
17 encompasses the lodestar. *See Hensley, supra*, 461 U.S. at 435. Other relevant factors  
18 identified in *Johnson, supra*, 488 F.2d at 717-19 "usually are subsumed within the initial  
19 calculation of hours reasonably expended at a reasonably hourly rate."<sup>1</sup> *See Hensley, supra*,

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22 <sup>1</sup> The *Johnson* factors are: (1) The time and labor involved; (2) the novelty and difficulty  
23 of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the  
24 preclusion of other employment by the attorney due to acceptance of the case; (5) the customary  
fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the  
circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation,

1 461 U.S. at 434 n.9 (other citation omitted); *see also Kerr v. Screen Extras Guild, Inc.*, 526  
2 F.2d 67, 70 (9th Cir. 1975) (adopting *Johnson* factors); *Stevens v. Safeway*, 2008 U.S. Dist.  
3 LEXIS 17119 at \*40-\*41 (C.D. Cal. 2008) (“A court employing th[e] Hensley lodestar  
4 method of the hours reasonably expended multiplied by a reasonable hourly rate] to  
5 determine the amount of an attorney’s fees award does not directly consider the multi-factor  
6 test developed in *Johnson, supra*, 488 F.2d at 717-19, and *Kerr, supra*, 526 F.2d at 69-70”);  
7 *but see Goodwin v. Astrue*, 2012 U.S. Dist. LEXIS 97651 at \*10-\*12, \*14-\*20 (W.D. Wash.  
8 2012) (applying *Johnson* factors), adopted by 2012 U.S. Dist. LEXIS 97650 (W.D. Wash.  
9 2012).

10 As defendant does not object to plaintiff’s request for reimbursement for expenses  
11 and does not object to plaintiff’s requested hourly rate for his attorney’s fees request, the  
12 gravamen of defendant’s contentions here concern “the number of hours reasonably  
13 expended on the litigation” (*see* ECF No. 20). *See also Hensley, supra*, 461 U.S. at 433.

14 The Court has reviewed the facts of this case. *See Hensley, supra*, 461 U.S. at 429,  
15 433 n.7 (once the court determines that a plaintiff is entitled to a reasonable fee, “the amount  
16 of the fee, of course, must be determined on the facts of each case”). Based on the facts of  
17 this case, the parties’ arguments, and plaintiff’s declaration and time sheet, the Court  
18 concludes that plaintiff’s incurred hours and fee request are reasonable.  
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21 and ability of the attorneys; (10); the ‘undesirability’ of the case; (11) the nature and length of  
22 the professional relationship with the client; and (12) awards in similar cases. *Johnson, supra*,  
23 488 F.2d at 717-19) (citations omitted); *see also United States v. Guerette*, 2011 U.S. Dist.  
24 LEXIS 21457 at \*4-\*5 (D. Hi 2011) (“factors one through five have been subsumed” in the  
determination of a number of hours reasonably expended multiplied by a reasonable rate); *but*  
*see City of Burlington v. Dague*, 505 U.S. 557 (1992) (rejecting factor 6 of contingent nature of  
the fee).

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Plaintiff is awarded \$7,773.98 in attorney's fees, pursuant to the EAJA and consistent with *strue v. Ratliff*, 130 S. Ct. 2521, 2524, 2010 U.S. LEXIS 4763 at \*\*\*6-\*\*\*7 (2010).

Dated this 21st day of December, 2017.

J. Richard Creatura  
United States Magistrate Judge